Supreme Court of the United States

October Term 1921

NO. 130

Keokuk and Hamilton Bridge Company,
v. Appellant,
Fred Salm, Jr., Elmer F. Dennis, William E. Miller, et al., Applelees.

APPELLEE'S BRIEF.

Earl W. Wood,
Solicitor for Appellees.

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SUBJECT INDEX AND CASES CITED.

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STATEMENT.

This is a suit in equity instituted by Appellant, Keokuk and Hamilton Bridge Company, in the District Court of the United States of the Southern District of Illinois, against Appellees, individually and in their respective official capacities as County Treasurer, Local Assessor, County Clerk and members of the Board of Review of Hancock County, Illinois. The bill seeks to restrain the collection of taxes assessed against that portion of Appellant's bridge situated in Hancock County, Illinois, for the year 1918. The District Court dismissed Appellant's bill of complaint in accordance with the motion of Appellees to dismiss said bill and Appellant prosecutes this ap-

peal. The Keokuk and Hamilton Bridge Company, a corporation, is the owner of a bridge across the Mississippi river from Hamilton, Illinois, to Keokuk, Iowa. That portion of said bridge situated in Hancock County, Illinois, was assessed by the Board of Review of said Hancock County, at $100,000.00, as the equalized assessed value thereof, this being, under the laws of the State of Illinois, one-third of the fair cash value of said property.

It is alleged by Appellant in its bill that said property was assessed on a basis of about 150% valuation and that *other classes* of property of similar character and value were assessed at about 40% of the fair cash value. There is no allegation in the bill that other property in the *same class* was assessed on a different basis from Appellant's property. Appellant insists, however, that its property is being taken without due process of law and that it is denied the equal protection of the laws, within the meaning of the Fourteenth Amendment to the Constitution of the United States. Appellant also alleges that its property is not land but railroad property and that under the laws of Illinois, it should have been assessed by the State Board of Equalization and not by Appellees as the local taxing bodies of Hancock County.

Appellees entered a motion in the District Court to dismiss the bill and set up ten reasons why the bill, upon its face, is insufficient. (See page 7 of the printed transcript of record.)

The District Court allowed Appellee's motion to dismiss the bill and refused to grant an injunction and held that Appellant had a plain, adequate and complete remedy at law before the Board of Review and by making objection to any judgment being entered for the taxes in the County Court of said Hancock County, Illinois. (See memorandum views of the Court, page 11 of the printed transcript of the record.)

APPELLANT HAS AN ADEQUATE REMEDY AT LAW.

A suit in equity cannot be maintained in the Federal Court where there is an adequate remedy at law provided by the statutes of the state.

Sec. 267 Judicial Code; 36 Stat. L. 1163; Fed Stat. Ann. 2nd Ed., Vol. 5. p. 989, Sec. 267.

Singer Sewing Machine Co., v. Benedict, 229 U. S. 481.

Shelton v. Platt, 139 U. S. 591.

The laws of the State of Illinois furnish an adequate remedy at law.

1. The Statute of the State of Illinois, with reference to Appellant's bridge, provides:

"That all bridge structures across any navigable streams forming the boundary line between the State of Illinois and any other state shall be assessed by the township or other assessor in the county or township where the same is located, as real estate; and all provisions of law relating to the assessment and taxation of real estate shall apply to the assessment and taxation of such bridges. * * *" Chapter 120 section 354, Hurd's Revised Statutes of Illinois, 1917.

2. The Statute of the State of Illinois provides for a review of assessments before the county supervisor of assessments and county assessor, as follows:

"The office of the board of assessors, the county supervisor of assessments, and the county assessor shall be open all the year during buiness hours to hear and receive complaints or suggestions that real property has not been assessed at proper valuation." * * * Chapter 120, sections 319-320 Hurd's Revised Statutes of Illinois, 1917.

3. The Statute of the State of Illinois provides that, after the assessor has made an assessment,

then, on complaint in writing, that any property described in such complaint is incorrectly assessed, the Board of Review shall review the assessment and correct the same as shall appear to be just. This is an adequate remedy at law and Appellant fails to allege that it has exhausted this remedy.

Par. four, Sec. 329, Chapter 120, Hurd's Revised Statutes of Illinois, 1917, is in part as follows:

"On complaint in writing that any property described in such complaint is incorrectly assessed, the board shall review the assessment, and correct the same, as shall appear to be just."

4. The Statute of the State of Illinois provides that if defense, (specifying in writing the particular cause of objection) be offered by any person interested in the entry of judgment against the property contained in the delinquent list, the county court shall hear and determine the matter in a summary manner without pleadings, and shall pronounce judgment as the right of the case may be. The statute further provided for an appeal from the judgment of the County Court direct to the Supreme Court. This is an adequate remedy at law and appellant does not allege that it has exhausted this remedy.

Sections 191-192, Chapter 120, Hurd's Revised Statutes of Illinois, 1917, are, in part, as follows:

"191. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be." * * *

"192. Appeals from the judgment of the court may be taken during the same term to the Supreme Court on the party praying an appeal executing a bond to the People of the State of Illinois, in some reasonable amount to be fixed by the court, conditioned that the appellant will prosecute his said appeal with effect, and will pay the amount of any tax assessment and cost which may finally be adjudged against the real estate involved in the appeal by any court having jurisdiction of the cause." * * *

THE FOURTEENTH AMENDMENT WAS NOT VIOLATED.

Appellant in its bill does not show wherein the Fourteenth Amendment to the Constitution of the United States was violated. It does not aver or show

that it complained to the local assessor, the board of review, or that it made objection in the county court, to have the alleged improper assessment corrected. It does not aver or show that it was denied a hearing by any of the taxing bodies, or that it was not given notice of its assessment, and thus it fails to show that its property was taken without due process of law.

If a taxpayer be given an opportunity to test the validity of the tax at any time before it is made final, whether the proceedings for review take place before a board having a quasi-judicial character, or before a tribunal provided by the state for the purpose of determining such questions, due process of law is not denied.

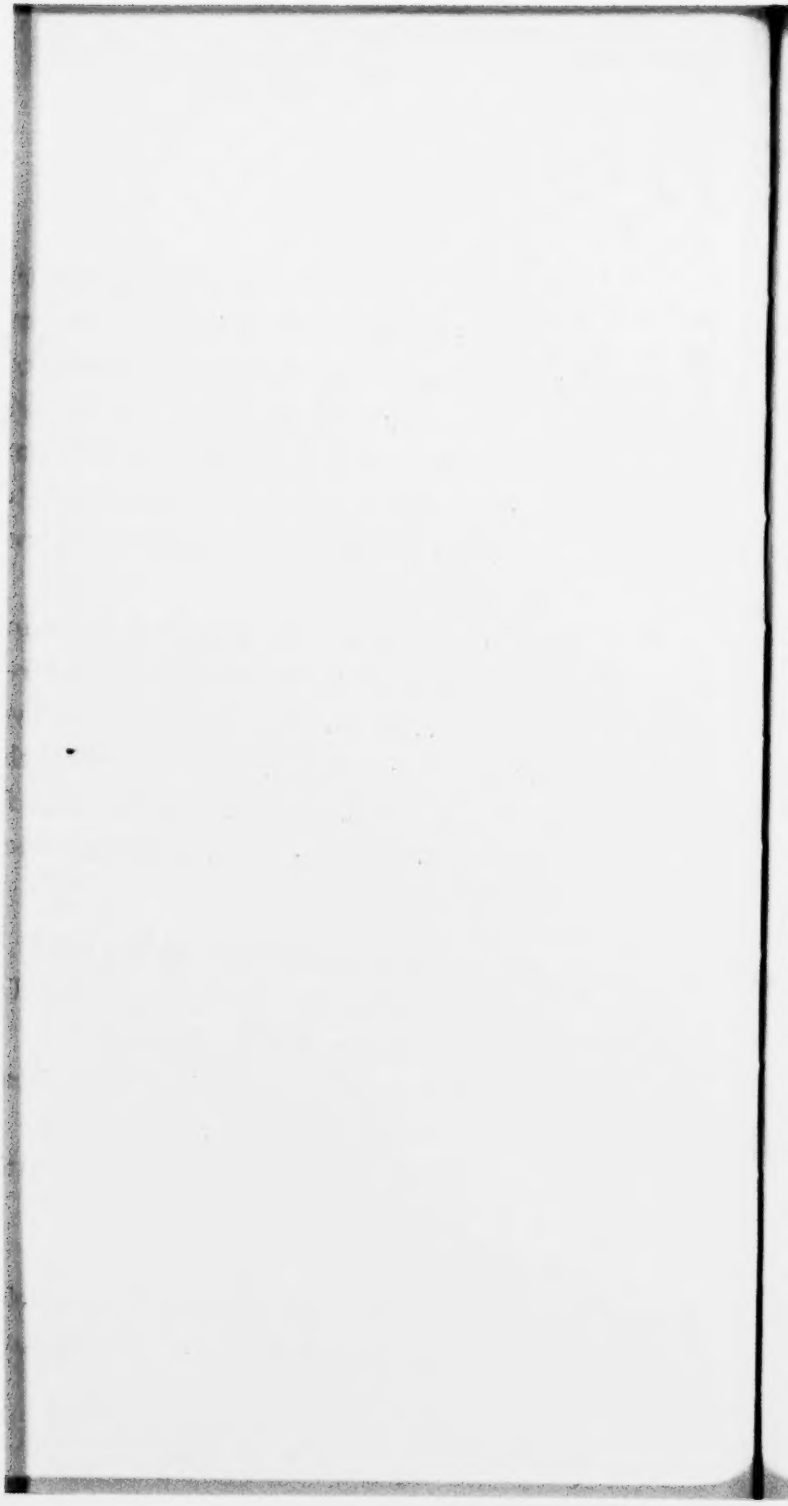
Hodge v. Muscatine County, 196 U. S. 281.

Pittsburgh etc., R. Co., v. Board of Public Works, 172 U. S. 32.

New York v. New York State Board of Tax Comrs. 199 U. S. 48.

Susman v. Board of Public Education, 228 Fed. 217.

In matters of taxation, it is sufficient that the party assessed should have an opportunity to be



heard either before a tribunal, or before a board of assessment, at some stage of the proceeding.

Pittsburg etc., R. Co., v. Board of Public Works, 172 U. S. 32.

Winona, etc., Land Co., v. Minnesota, 159 U. S. 537.

Wurts v. Hoagland, 114 U. S. 614.

Weyerhauser v. Minnesota, 176 U. S. 554.

Security Trust, etc., Co., v. Lexington, 203 U. S. 323.

Palmer v. McMahon, 133 U. S. 669.

The presumption is that a tax is assessed properly, and to overcome this presumption, the bill must show that the objection to the assessment has not been waived through neglect or choice of the complainant in not appearing before the board of review and in not filing its objection in the County Court.

Chicago & Northwestern R. Co., v. People, 174 Ill., 80.

Cleveland C. C. & St. L. R. Co., v. People, 212 Ill., 551.

Spencer & Gardiner v. People, 68 Ill., 510.

Merchants and M. National Bank v. Pa. 167 U. S. 461.

Humphrey et al., v. Nelson, 115 Ill., 51.

People v. Lots in Ashley, 122 Ill., 298.

The bill fails to allege that other property of the *same class* with that of appellant was assessed at a lower valuation. It is only when property of the *same class* is assessed at different rates, that one is denied the equal protection of the laws under the Fourteenth Amendment. Property of different classes may be assessed at different rates.

Michigan C. R. Co., v. Powers 201 U. S. at p. 293, and cases there cited.

Not only does Appellant's bill fail to aver that other property of the *same class* was assessed at a lower valuation, but it specifically avers, as follows:

"Whereas defendants have intentionally, systematically and persistently assessed *other classes* of property of similar character and value at about forty per cent of such fair cash value and thereby is and has deprived complainant of the equal protection of the laws and taking complainant's property without due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States." (See page 4 of printed transcript of record.)

An allegation in the bill that the cause of action was a cause arising under the Constitution and laws

of the United States does not suffice, since it is well settled that a mere formal statement to that effect is not enough.

Peorge W. Norton etc., v. Robert B. Whiteside and Andrew J. Tallas, 239 U. S. 144; 36 S. Ct., 97; 60 U. S. (L. Ed.), 186.

The bill must aver sufficient facts to show, not as a matter of mere inference or argument, but clearly and distinctly, that the suit involves a construction or application of the Federal Constitution.

Muse v. Arlington Hotel Co., 168 U. S. 430; 18 S. Ct., 109; 42 U. S. (L. Ed.), 531.

Hull v. Barr, 234 U. S. 712; 34 S. Ct., 892; 58 U. S. (L. Ed.), 155.

Sugarman v. U. S. 249, U. S. 182: 39 S. Ct. 191; 63 U. S. (L. Ed.), 551.

Cosmopolitan Min. Co., v. Walsh, 193 U. S. 460; 24 S. Ct. 489; 48 U. S. (L. Ed.), 749.

Keokuk and Hamilton Bridge Co., v. People 173 U. S. 702; 175 U. S. 626.

The act of the local assessor in making the assessment, when no remedy is sought through the board of review or the county court is not the act of the state within the meaning of the Fourteenth

Amendment to the Constitution of the United States. For this reason, the bill must aver that these remedies have been sought, before a Federal question can be said to have been raised by the bill. This was not done in the case at bar.

Appellant's bill avers that the acts of appellees are inviolation of the constitution and laws of the State of Illinois. Therefore, it admits in its bill that its property is not being taken without due process of law and that it is not being denied the equal protection of the laws by the state, within the meaning of the Fourteenth Amendment to the Constitution of the United States.

This court has so held in the case of Barney v. New York, 193 U. S. 430.

The case of Raymond v. Chicago Union Traction Company, 207 U. S. 20, relied upon by Appellant, is not in point and is easily distinguished from the case at bar in the following main particulars:

(a) There are many equitable grounds of jurisdiction averred in the bill in the Raymond case that

do not appear in the case at bar, and the Court holds that all of them combined and taken together give jurisdiction.

(b) In the Raymond case the inequality was between properties of the same class.

(c) In the Raymond case there was no appeal from the decision of the State Board, and the act of the Board could, therefore, be said to be the complete act of the state within the meaning of the United States Constitution. In the case at bar, the action of the local assessor could be reviewed before the Board of Review, and the action of the Board of Review could be reviewed on objections filed in the County Court, which relief is not shown in the bill to have been sought by the complainant.

(d) In the Raymond case, the matter in dispute had been taken to the Supreme Court of the State of Illinois, and it was this decision of the state court which the State Board was forced to obey that made the action of the Board the act of the state, within the meaning of the Fourteenth Amendment to the United States Constitution. In the case at bar, complainant avers that the constitution and laws of the State of Illinois forbids the assessment that was made, which makes this case come under the

rule announced in Barney v. New York, 193 U. S. 430.

(c) In the Raymond case, it appears from the averments in the bill that the party objecting to the taxes had no notice or opportunity to be heard. These are not the facts in the case at bar, and they are not averred to be the facts in the bill.

The case of Green v. Louisville and I. R. Co., 244 U. S. 499, also relied upon by Appellant is not in point. In that case, sufficient facts were averred to show that the company was denied a hearing and was not given notice. No such averments appear in Appellant's bill in the case at bar. In the Green case the State, by statute, had not provided a method of review of the tax objected to before it was made final, as it has done in the case at bar.

APPELLANT'S BILL IS OTHERWISE DEFECTIVE.

1. Appellant, in its bill, does not offer to do equity by paying the tax justly due.

Equity will not grant an injunction to restrain the collection, even of an illegal tax, without the payment on the part of the taxpayer of the amount of the

tax fairly and equitably due. Appellant has not averred a willingness to pay such tax.

German National Bank v. Kimbal, 103 U. E. 732.

Raymond v. Chicago Union Traction Co., 207 U. S. 38.

People's National Bank v. Marye, 191 U. S. 272.

State Railway Tax Cases, 92 U. S. 616.

2. Appellant does not aver in its bill any ground of jurisdiction in equity. The only ground upon which it seeks equitable relief is that a tax judgment will cloud the title to its property.

If the tax assessment is in violation of the Constitution of the United States, as averred in the bill, it is void, and not a cloud upon the title of the preperty of the complainant entitling it to relief in equity.

The assertion of unconstitutionality cannot be resorted to, to maintain Federal jurisdiction as constituting a cloud.

Devine v. Los Angeles, 202 U. S. 313.

Hannewinkle v. Georgetown, 15 Wall 547; 21 U. S. 331.

"Assuming the tax to be void, equity will not restrain by injunction its collection, unless there be some other ground for equitable interposition."

Raymond v. Chicago Union Traction Co., 207 U. S. 39.
Shelton v. Platt, 139 U. S. 591.
Allen v. Pullman Palace Car Co., 139 U. S. 568.
Pacific Express Co., v. Seibert, 142 U. S. 339.

It does not aver in its bill that it has any lands, but claims that its property is not lands. This renders the bill fatally defective on the theory that Appellant's title will be clouded.

The bill avers that a judgment will be obtained and the property sold to its irreparable injury. This does not give equitable jurisdiction and, if it did, not enough facts are averred showing that judgment will be obtained or irreparable injury result. Before judgment can be rendered, complainant can obtain relief by filing its objections in the County Court of Hancock County, Illinois, to the alleged improper assessment. It is not averred in the bill that this has been done.

3. As the jurisdiction of the United States

courts is limited in the sense that they have no other jurisdiction than that conferred by the Constitution and laws of the United States, the presumption is that a case is without their jurisdiction, unless the contrary affirmatively appears in the record, and it is not sufficient that jurisdiction may be inferred argumentatively from the averments in the pleadings, but the averments should be positive, or the case will be dismissed at any stage of the proceedings.

Brown v. Keene, 8 Peters 110; 8 (L. Ed.) U. S. 885.

Sheldon v. Dill, 8th How. 441; 12th (L. Ed.) U. S. 1147.

Shade v. Northern Pac. Ry. Co., 206 Fed. 353.

APPELLANT'S BRIDGE IS NOT A RAILROAD.

Appellant urges in its bill that its property was taxed by the local assessor, when it should have been taxed by the State Board of Equalization as railroad track. It was assessed as a bridge under Sec. 354, Chapter 120, Hurd's Revised Statutes of Illinois, 1917, hereinbefore referred to. That statute provides that all bridge structures across any navigable stream forming the boundary line between the State of Illinois and any other state shall be assessed by the local assessor. This bridge falls within the provis-

ions of that statute and it was properly assessed by the local assessor. (See cases cited by the District Court in its opinion on page 13 of the printed transcript of record.)

In the recent case between the People of the State of Illinois, and this bridge company, involving the taxes for the year 1917, the Supreme Court of the State of Illinois held that this bridge was not railroad and was lawfully assessed by the local assessor as real estate, and was not to be assessed by the State Board of Equalization as a railroad.

Keokuk and Hamilton Bridge Co., v. People, 287 Ill., 246.

The Supreme Court of the State of Illinois has held that a bridge must be a part of a railroad system owned by a railroad company before it can be assessed by the State Board of Equalization and the bill in this case does not aver that the bridge is a part of a railroad system owned by Appellant. It avers that the railroads that use the bridge are owned by other companies.

C. & A. R. R. Co., v. People, 152 Ill., 408.
Anderson v. C. B. & Q. R. R. Co., 117 Ill., 26.
People v. A. T. & S. Co., 206 Ill. 253.

The United States Courts are bound to accept the construction that the highest state court has placed upon the revenue laws of the state, if such construction does not violate the Constitution of the United States.

Gatewood v. North Carolina, 203 U. S. 531.
Atchison etc., R. R. Co., v. Matthews, 174 U. S. 100.

The laws of the State of Illinois clearly show that Appellant was properly assessed as a bridge by the local assessor. The only property that Appellant claims to own is a bridge across the Mississippi river about a mile long, between the cities of Hamilton, Illinois, and Keokuk, Iowa. It does not own or claim to own any property beyond the limits of this bridge.

The bill avers that the bridge of Appellant was constructed in 1868 and 1869 under Act of Congress approved July 25, 1866. (This Statute is found in Vol. 14, U. S. Statutes at Large, pp. 244, 245, 246.)

The bill further avers that appellant was formed by the union of two corporations, one being the Hancock County Bridge Company, chartered by special act of the Illinois Legislature, and the other be-

ing an Iowa corporation. An examination of the language used in these acts, under which Appellant derives its corporate powers, shows it to be a bridge company and not a railroad company, and that its property is not a part of a railroad system owned by it. The Act of Congress and the Act of the State of Illinois expressly authorize the construction of a bridge and not a railroad, and the incorporation of a bridge and not a bridge company. (The Illinois Statute just referred to is found in Vol. 1, Private Laws of Illinois, 1865. Pages 180-181.)

The case of the Pittsburgh, Cincinnati and St. Louis Railway Company, v. The Keokuk and Hamilton Bridge Company—The Pennsylvania Railroad Company v. The Keokuk and Hamilton Bridge Company, 131 U. S. 371, relied upon by Appellant says it is a railroad company within the meaning of a Pennsylvania Statute. The case at bar, however, involves the construction of an Illinois Statute, and the above Illinois cases holding complainant to be a bridge company and not a railroad company, under the revenue laws of the State of Illinois are controlling.

The following cases in the Supreme Court of the State of Illinois and the Supreme Court of the

United States, wherein taxes against Appellant's bridge have been involved, throw light upon many of the questions involved in this appeal.

The People v. K. and H. Bridge Co., 287 Ill., 246.

Keokuk and Hamilton Bridge Co., v. People, 295 Ill., 176.

Keokuk and Hamilton Bridge Co. v. People, 161 Ill., 514.

Keokuk and Hamilton Bridge Co., v. People, 161 Ill., 132.

Keokuk and Hamilton Bridge Company v. Illinois, 175 U. S. 626.

Keokuk and Hamilton Bridge Company v. The People of the State of Illinois, 145 Ill., 596.

The Keokuk and Hamilton Bridge Company v. The People 167 Ill. 15.

Keokuk and Hamilton Bridge Company, v. The People of the State of Illinois, 173 U. S. 702.

MOTION TO DISMISS THE APPEAL.

Appellees hereby renew their motion to dismiss this appeal, heretofore filed herein, and insist that the appeal in this case should have been taken to the Circuit Court of Appeals and that this court has no jurisdiction. There is no question of the jurisdiction

of the District Court as a *Federal Court* involved, but the sole question is as to whether or not there is any equity on the face of the bill. The construction of the Fourteenth Amendment to the United States Constitution is not involved.

In addition to the cases herein cited we would refer the Court to the cases cited in our previous brief heretofore filed under the same cover with the motion to dismiss and which is entitled, "Motion to dismiss and brief on motion."

Appellees respectfully ask that the appeal be dismissed, or that if the Court should feel that the appeal should not be dismissed, that then the order and judgment of the District Court be affirmed.

Respectfully submitted,

EARL W. WOOD,
Solicitor for Appellees.

Receipt of Appellee's brief in the above entitled cause is hereby acknowledged this 23rd day of January, 1922.

F. T. HUGHES,
Solicitor for Appellant.